

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.16573 of 2016
and
W.M.P.No.14316 of 2016

M.K.Aromatics (MK Aromatics Limited),
Represented by its Manager,
K.Periannan
43-47 Sidco Industrial Estate,
Alathur - 603 110.
Tamil Nadu. Petitioner

Vs.

The Assistant Commissioner (CT),
Thirukazhkundram Assessment Circle,
42, Wahab Nagar,
Thirukazhkundram. Respondent

Prayer: Writ Petition is filed under Article 226 of the
Constitution of India praying for the issuance of Writ of
Certiorari, call for the records on the file of the respondent
herein TIN: 33451604709/2008-2009, dated 21.04.2016, quashing
the same.

For Petitioner : Mr.N.Inbarajan

For Respondent : Mr.R.Swarnavel,
Government Advocate

O R D E R

Heard the learned counsel for the petitioner and the
learned Government Advocate appearing for the respondent.

2. The petitioner has challenged the impugned order dated
21.04.2016 passed by the respondent in TIN/33451604709/2008-
2009. By the impugned order, the turnover of the petitioner was
re-determined for the Assessment Year 2008-2009 as follows:-

	Turn over	Rate of Tax	Tax Due
	8,47,499-00	12.%	Rs. 1,05,937-00
Add : Reversal of ITC U/s 19(7)			Rs. 23,831-00
Add : Reversal of ITC U/s 19(3) (b)			Rs. 13,93,508-00

Total Tax Due			Rs. 15,23,276-00
Less : ITC Adjusted			Rs. 12,812-00

Net Tax Due			Rs. 15,10,464-00
Tax Paid			Nil
Balance			Rs.15,10,464-00

A Notice in Form 'O' is issued

Penalty Under Section 27(3) of the TNVAT Act, 2006

Due - Rs.69,844-00

Paid - Rs. Nil -

Balance Rs.69,844-00

A Notice in Form RR is issued

Penalty Under Section 27(4) of the TNVAT Act, 2006

Due - Rs.11,916-00

Paid - Rs. Nil -

Balance Rs.11,916-00

A Notice in Form RR is issued

3. The petitioner is engaged in manufacture of fuel oil / furnace oil from Post Consumer Waste Plastics. The fuel oil /

furnace oil manufactured by the petitioner was sold to the industrial consumer for manufacturing final products. The petitioner was paying tax at the rate of 5% and had filed appropriate returns by treating the products manufactured by the petitioner as industrial inputs liable to tax at the rate of 5% in terms of Entry 67 of Part B of the First Schedule to the Tamil Nadu Value Added Tax Act, 2006. Entry 67 of Part B of the First Schedule to the Tamil Nadu Value Added Tax Act, 2006 reads as under:-

'67. Industrial inputs, that is to say, any goods falling under Part-C of this Schedule, including consumables, packing materials and labels but excluding plant and machinery, ethyl alcohol, absolute alcohol, methyl alcohol, rectified spirit, neutral spirit and cement, for use in manufacture and for use in assembling, packing or labelling in connection with such manufacture, inside the State, of goods other than those falling under Second Schedule.'

4. The respondent however initiated proceedings under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 pursuant to the report of the Enforcement Wing conducted at the place of the business of the petitioner on concluded that the petitioner failed to produce necessary declaration under Rule 6(3)(b) of the Tamil Nadu Value Added Tax Rules, 2007 and therefore, the petitioner was liable to pay tax at the rate of 12.5% / 14.5% in terms of residuary Entry 69 of Part 'C' of the First Schedule to the Tamil Nadu Value Added Tax Act, 2006. Rule 6(3)(b) of the Rules is reproduced below:-

'Rule 6 Accounts (1).....

R.6(3)(b) Every registered dealer who is a manufacturer or producer and purchases industrial inputs to use them in manufacture of taxable goods shall issue a certificate to the seller containing the details of his Taxpayer Identification Number, the details of goods purchased, details of goods manufactured and the name and address and Taxpayer Identification Number of the seller.'

5. Pursuant to the same, the respondent estimated the sales turnover and proposed to levy tax at the rate of 12.5% / 14.5% under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 by treating the manufactured products sold by the petitioner was liable to tax under Entry 69 of Part 'C' of the First Schedule to the Tamil Nadu Value Added Tax Act, 2006 and based on the clarifications of the Commissioner of Commercial Taxes.

6. Meanwhile, the petitioner filed an application before the Advance Ruling Authority under Section 48A of the Tamil Nadu Value Added Tax Act, 2006. The said Authority by its clarification /Advance Ruling in ACAAR No.143/2014-2015 / Acts Cell - II/9865/2015 dated 04.02.2016 has clarified that the products, namely fuel oil / furnace oil manufactured and sold by the petitioner falls under Entry 69 of Part 'C' of the First Schedule to the Tamil Nadu Value Added Tax Act, 2006 and was liable to tax at the rate of 12.5% / 14.5% and subject to the petitioner furnishing certificate under Rule 6(3)(b) of the Tamil Nadu Value Added Tax Rules, 2007, the products manufactured and sold by the petitioner was liable to tax at the rate of 5%.

7. It is the case of the petitioner that the respondent did not give time to the petitioner to file certificate under Rule 6 (3)(b) of the Tamil Nadu Value Added Tax Rules, 2007 and straightaway proceeded to levy tax at higher rate of 12.5% / 14.5% apart from imposing penalty under Sections 27(3) and 27(4) of the Tamil Nadu Value Added Tax Act, 2006.

8. The learned counsel for the petitioner also drew my attention to the decision of this Court in M/s. Farida Leather Company Vs. Commercial Tax Officer, in W.P.Nos.7144 to 7147 of 2016 dated 01.09.2020, wherein, the Court referred to Circular No.3 dated 18.01.2019 issued by the Commissioner of State Tax, Chennai. Reference was made to paragraph 'b' of the said Circular which reads as under:-

"b) If the Assessing Authority is of the view that the Audit report or Inspection proposals received from Enforcement wing or proposals received from ISIC are not in conformity with the Law or the established principles set by various higher judicial Forums and if he wishes to deviate from the proposals either partly or wholly, he himself can finalize the assessment or revision of assessment without seeking approval from the Enforcement Wing/ISIC Authorities who had approved the proposals, and reasons for the same to be recorded."

9. It is further submitted that the order passed by the respondent was thus liable to be set aside. It is noticed that the petitioner has obtained clarification/advance ruling from the Advance Ruling Authority under Section 48A of the Tamil Nadu Value Added Tax Act, 2006. As per Sub-Clause 3 to Section 48A of the Act, the order of the Authority is binding on the petitioner.

10. It is noticed that by an order dated 18.09.2019 in W.P.Nos.28259 to 28261 of 2012 in Sungwoo Gestamp Hitech (Chennai) Limited Vs. The Assistant Commissioner (CT), the co-ordinate Bench of this Court has remanded the case back to the Assessing Officer to re-do the Assessment after hearing the petitioner therein as the declaration in terms of Rule 6(3)(b) of the Tamil Nadu Value Added Tax Rules, 2007 was not the only evidence in support of the claim and also the said petitioner was entitled to produce any evidence as it may be in a position to do. Relevant portion of the said order reads as follows:-

21. In the light of the discussion as aforesaid, I am of the view that non-production of a Declaration under section 6 (3)(b) is not fatal to the claim of the assessee. Having said so, the Assessing Authority has in the impugned order found that only a supporting statement was filed by the petitioner and had no actual particulars of transactions such as work order, inward delivery challan, quantity received and outward delivery challan were supplied. If at all the petitioner was of the view that its claim was in order, the burden rested upon it to justify such claim with whatever material that it could furnish. Such factual particulars do not appear to have been filed.

22. Thus while holding that the Declaration in terms of * Section 6(3)(b) is not the only evidence in support of the claim of the petitioner and that the petitioner is well entitled to produce any other supporting evidence as it may be in a position to, this issue is remanded back to the Assessing Officer to be re-done after hearing the petitioner, within a period of four weeks from the date of receipt of a copy of the order.

23. With regard to the second ground, the case of the petitioner hinges on the provisions of Section 19(2)(iv) of the Act, as per which, ITC shall be allowed on all purchases of goods made within the State, for the purpose of use as capital goods. Thus, according to the assessee, whatever may be the rate of tax as per Schedule to

the Act, ITC is available on the tax actually remitted.

24. This Court, in the case of Sara Leathers (supra) considered the claim of refund by an assessee. The petitioner therein had claimed refund that had been restricted by the Assessing Officer on the ground that the proper rate of tax in respect of the goods was much less than what had been remitted. The applicable statutory provision in that case was Section 18 dealing with zero-rating and upon consideration of the matter, this Court has expressed the view that the right of input tax credit, when the payment of tax per se is not disputed, is absolute. If the Revenue were to be extended the discretion to either restrict the claim of refund or a claim of input tax credit when the payment of tax was itself undisputed, then it would give rise to a case of unjust enrichment where having received the tax at a particular rate, the claim of ITC in that regard was restricted. Evidently, this cannot be so and for these reasons, the second ground is allowed.

25. These Writ Petitions are allowed in the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

* Rule 6(3)(b) of the Tamil Nadu Value Added Tax Rules, 2007.

11. It is to be further noted that as per Section 3(2) of the Tamil Nadu Value Added Tax Act, 2006, subject to the provisions of Sub-Section (1), in the case of tax goods specified in Part 'B' or Part 'C' of the First Schedule, the tax under the Act shall be payable by a dealer on every sale made by him within the State at the rate specified therein.

12. Entry 69 of Part 'C' of the First Schedule to the Tamil Nadu Value Added Tax Act, 2006 is residuary entry and applies to "any other goods not specified in any of the Schedules". On the other hand, the Entry 67 of Part 'B' of the First Schedule to the Act specifically applies to "industrial inputs" in any goods falling under Part 'C' of the First Schedule to the Act. It includes consumables, packing materials and labels. It only

excludes plant and machinery, ethyl alcohol, absolute alcohol, methyl alcohol, rectified spirit and cement for use in manufacture and assembling, packing and labelling in connection with such manufacture inside the State for manufacture of goods other than those falling under Second Schedule.

13. Thus, goods falling under Entry 69 of Part 'C' of the First Schedule to the Tamil Nadu Value Added Tax Act, 2006 are also liable to tax at the rate prescribed for in Entry 67 of Part 'B' of the First Schedule to the Tamil Nadu Value Added Tax Act, 2006 provided it qualifies as "Industrial Inputs". Fuel oil /Furnace Oil manufactured and sold by the petitioner is not outside the exclusions in Entry 67 of Part 'B' of the First Schedule to the Tamil Nadu Value Added Tax Act, 2006.

14. Thus, on the face of it, the products manufactured and sold by the petitioner to industrial consumers are liable to tax under Entry 67 of Part 'B' of the First Schedule to the Act even if the products manufactured by the petitioner otherwise falls under Entry 69 of Part 'C' of the First Schedule to the Act. Rule 6(3)(b) of the Tamil Nadu Value Added Tax Rules, 2007 which has been extracted above merely contemplates the issue of certificate to the seller by a buyer containing the details of his Taxpayer Identification Number, the details of goods purchased, details of goods manufactured and the name and address and Taxpayer Identification Number of the seller.

15. Therefore, merely because the industrial consumer fails to issue such certificate contemplated in Rule 6(3)(b) of the Tamil Nadu Value Added Tax Rules, 2007 ipso facto will not disentitle the petitioner to tax at the rate specified for "Industrial Inputs" under Entry 67 of the Part 'B' of the First Schedule to the Act.

16. However, the fact remains that the petitioner has obtained clarification dated 04.02.2016 under Section 48A of the Tamil Nadu Value Added Tax Act, 2006 which enjoins the petitioner to obtain the clarification from the buyer. In my view, denial of assessment of fuel oil / furnace oil manufactured by the petitioner and sold to the industrial consumers under Entry 67 of Part 'B' of the First Schedule to the Tamil Nadu Value Added Tax Act, 2006 based on a skewed reading of Rule 6(3)(b) of the Tamil Nadu Value Added Tax Rules, 2007 is contrary to the charging provision under Section 6(3) of the Tamil Nadu Value Added Tax Act, 2006. The petitioner can produce any other proof that the sale was made to an industrial consumer. It can be in any other form apart from the certificate under Rule 6(3)(b) of the Tamil Nadu Value Added Tax Rules, 2007.

17. The petitioner is therefore entitled to produce such other evidences, through which, it may establish the products manufactured and sold by it qualifies as "Industrial Inputs" within the meaning of the aforesaid Entry. Under these circumstances, the impugned order passed by the respondent is set aside and this case is remitted back to the respondent to pass a fresh order in the light of the decision of this Court in Sungwoo Gestamp Hitech (Chennai) Limited Vs. The Assistant Commissioner (CT), in W.P.Nos.28259 to 28261 of 2012, dated 18.09.2019 and in the light of the observations contained herein.

18. Since the dispute pertains to the Assessment year 2008-2009, the respondent is directed to pass such order within a period of 60 days from the date of receipt of a copy of this order. Needless to state, before passing such order, the respondent shall comply with the principles of natural justice by affording an opportunity of hearing to the petitioner.

19. Accordingly, this Writ Petition stands disposed of with the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jas / jen

To

The Assistant Commissioner (CT),
Thirukazhkundram Assessment Circle,
42, Wahab Nagar,
Thirukazhkundram.

+1 cc to M/s.N.Inbarajan, Advocate Sr.No. 137

+1 cc to The Special Government Pleader(tax) Sr.No. 343

W.P.No.16573 of 2016
and
W.M.P.No.14316 of 2016

RSI (CO)
RMP (01/03/2021)